

SECOND REGULAR SESSION

HOUSE BILL NO. 1394

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RIBACK WILSON, BRAY, GAMBARO, BOUCHER,
CAMPBELL, HILGEMAN (Co-Sponsors) AND COLEMAN.

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TED WEDEL, Chief Clerk

3714L.011

AN ACT

To repeal sections 546.680, 546.710, 546.720, 546.730, 546.740, 546.750, 558.019, 565.020, 565.032 and 565.040, RSMo, and to enact in lieu thereof three new sections relating to the death penalty, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 546.680, 546.710, 546.720, 546.730, 546.740, 546.750, 558.019, 565.020, 565.032 and 565.040, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 558.019, 565.020 and 565.040, to read as follows:

558.019. 1. This section shall not be construed to affect the powers of the governor [under] **pursuant to** article IV, section 7, of the Missouri Constitution. This statute shall not affect those provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

2. The provisions of this section shall be applicable to all classes of felonies except those set forth in chapter 195, RSMo, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of a defendant after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any defendant who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve the following minimum

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 prison terms:

16 (1) If the defendant has one previous prison commitment to the department of
17 corrections for a felony offense, the minimum prison term which the defendant must serve shall
18 be forty percent of [his] **such** sentence or until the defendant attains seventy years of age, and has
19 served at least forty percent of the sentence imposed, whichever occurs first;

20 (2) If the defendant has two previous prison commitments to the department of
21 corrections for felonies unrelated to the present offense, the minimum prison term which the
22 defendant must serve shall be fifty percent of [his] **such** sentence or until the defendant attains
23 seventy years of age, and has served at least forty percent of the sentence imposed, whichever
24 occurs first;

25 (3) If the defendant has three or more previous prison commitments to the department
26 of corrections for felonies unrelated to the present offense, the minimum prison term which the
27 defendant must serve shall be eighty percent of [his] **such** sentence or until the defendant attains
28 seventy years of age, and has served at least forty percent of the sentence imposed, whichever
29 occurs first.

30 3. Other provisions of the law to the contrary notwithstanding, any defendant who has
31 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061,
32 RSMo, and is committed to the department of corrections shall be required to serve a minimum
33 prison term of eighty-five percent of the sentence imposed by the court or until the defendant
34 attains seventy years of age, and has served at least forty percent of the sentence imposed,
35 whichever occurs first.

36 4. For the purpose of determining the minimum prison term to be served, the following
37 calculations shall apply:

38 (1) A sentence of life shall be calculated to be thirty years;

39 (2) Any sentence either alone or in the aggregate with other consecutive sentences for
40 crimes committed at or near the same time which is over seventy-five years shall be calculated
41 to be seventy-five years.

42 5. For purposes of this section, the term "minimum prison term" shall mean time
43 required to be served by the defendant before [he] **the defendant** is eligible for parole,
44 conditional release or other early release by the department of corrections. Except that the board
45 of probation and parole, in the case of consecutive sentences imposed at the same time pursuant
46 to a course of conduct constituting a common scheme or plan, shall be authorized to convert
47 consecutive sentences to concurrent sentences, when the board finds, after hearing with notice
48 to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably
49 excessive total term, taking into consideration all factors related to the crime or crimes
50 committed and the sentences received by others similarly situated.

51 6. (1) A sentencing advisory commission is hereby created to consist of eleven
52 members. One member shall be appointed by the speaker of the house. One member shall be
53 appointed by the president pro tem of the senate. One member shall be the director of the
54 department of corrections. Six members shall be appointed by and serve at the pleasure of the
55 governor from among the following: the public defender commission; private citizens; a private
56 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
57 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
58 All members of the sentencing commission appointed prior to August 28, 1994, shall continue
59 to serve on the sentencing advisory commission at the pleasure of the governor.

60 (2) The commission shall study sentencing practices in the circuit courts throughout the
61 state for the purpose of determining whether and to what extent disparities exist among the
62 various circuit courts with respect to the length of sentences imposed and the use of probation
63 for defendants convicted of the same or similar crimes and with similar criminal histories. [The
64 commission shall also study and examine whether and to what extent sentencing disparity among
65 economic and social classes exists in relation to the sentence of death and if so, the reasons
66 therefor.] It shall compile statistics, examine cases, draw conclusions, and perform other duties
67 relevant to the research and investigation of disparities in [death penalty] sentencing among
68 economic and social classes.

69 (3) The commission shall establish a system of recommended sentences, within the
70 statutory minimum and maximum sentences provided by law for each felony committed [under]
71 **pursuant to** the laws of this state. This system of recommended sentences shall be distributed
72 to all sentencing courts within the state of Missouri. The recommended sentence for each crime
73 shall take into account, but not be limited to, the following factors:

- 74 (a) The nature and severity of each offense;
75 (b) The record of prior offenses by the offender;
76 (c) The data gathered by the commission showing the duration and nature of sentences
77 imposed for each crime; and
78 (d) The resources of the department of corrections and other authorities to carry out the
79 punishments that are imposed.

80 (4) The [commission shall publish and distribute its system of recommended sentences
81 on or before July 1, 1995. The commission shall study the implementation and use of the system
82 of recommended sentences until July 1, 1998, and return a final report to the governor, the
83 speaker of the house of representatives, and the president pro tem of the senate. Following the
84 July 1, 1998, report, the] commission may revise the recommended sentences every three years.

85 (5) The governor shall select a chairperson who shall call meetings of the commission
86 as required or permitted pursuant to the purpose of the sentencing commission.

87 (6) The members of the commission shall not receive compensation for their duties on
88 the commission, but shall be reimbursed for actual and necessary expenses incurred in the
89 performance of these duties and for which they are not reimbursed by reason of their other paid
90 positions.

91 (7) The circuit and associate circuit courts of this state, the office of the state courts
92 administrator, the department of public safety, and the department of corrections shall cooperate
93 with the commission by providing information or access to information needed by the
94 commission. The office of the state courts administrator will provide needed staffing resources.

95 7. The provisions of this section shall apply only to offenses occurring on or after
96 August 28, 1994.

565.020. 1. A person commits the crime of murder in the first degree if [he] **such**
2 **person** knowingly causes the death of another person after deliberation upon the matter.

3 2. Murder in the first degree is a class A felony, and the punishment shall be [either death
4 or] imprisonment for life without eligibility for probation or parole, or release except by act of
5 the governor[; except that, if a person has not reached his sixteenth birthday at the time of the
6 commission of the crime, the punishment shall be imprisonment for life without eligibility for
7 probation or parole, or release except by act of the governor].

565.040. [1. In the event that the death penalty provided in this chapter is held to be
2 unconstitutional,] Any person convicted of murder in the first degree [shall be] **and** sentenced
3 by the court **to death hereafter has such sentence commuted** to life imprisonment without
4 eligibility for probation, parole, or release except by act of the governor[, with the exception that
5 when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid
6 for another reason, the supreme court of Missouri is further authorized to remand the case for
7 resentencing or retrial of the punishment pursuant to subsection 5 of section 565.036.

8 2. In the event that any death sentence imposed pursuant to this chapter is held to be
9 unconstitutional, the trial court which previously sentenced the defendant to death shall cause
10 the defendant to be brought before the court and shall sentence the defendant to life
11 imprisonment without eligibility for probation, parole, or release except by act of the governor,
12 with the exception that when a specific aggravating circumstance found in a case is held to be
13 inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is
14 further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of
15 section 565.035].

[546.680. When judgment of death is rendered by any court of competent
2 jurisdiction, a warrant signed by the judge and attested by the clerk under the seal of
3 the court must be drawn and delivered to the sheriff. It must state the conviction and
4 judgment and appoint a day on which the judgment must be executed, which must
5 not be less than thirty nor more than sixty days from the date of judgment, and must

6 direct the sheriff to deliver the defendant, at a time specified in said order, not more
7 than ten days from the date of judgment, to the chief administrative officer of a
8 correctional facility of the department of corrections, for execution.]

[546.710. Upon such convicted offender being brought before the court, they
2 shall proceed to inquire into the facts, and if no legal reasons exist against the
3 execution of sentence, such court shall issue a warrant to the director of the
4 department of corrections, for the execution of the prisoner at the time therein
5 specified, which execution shall be obeyed by the director accordingly.]

[546.720. The manner of inflicting the punishment of death shall be by the
2 administration of lethal gas or by means of the administration of lethal injection.
3 And for such purpose the director of the department of corrections is hereby
4 authorized and directed to provide a suitable and efficient room or place, enclosed
5 from public view, within the walls of a correctional facility of the department of
6 corrections, and the necessary appliances for carrying into execution the death
7 penalty by means of the administration of lethal gas or by means of the
8 administration of lethal injection.]

[546.730. A judgment of death must be executed within a correctional center
2 of the department of corrections; and such execution shall be under the supervision
3 and direction of the director of the department of corrections.]

[546.740. The chief administrative officer of the correctional center, or his
2 duly appointed representative shall be present at the execution and the director of the
3 department of corrections shall invite the presence of the attorney general of the state,
4 and at least eight reputable citizens, to be selected by him; and he shall at the request
5 of the defendant, permit such clergy or religious leaders, not exceeding two, as the
6 defendant may name, and any person, other than another incarcerated offender,
7 relatives or friends, not to exceed five, to be present at the execution, together with
8 such peace officers as he may think expedient, to witness the execution; but no
9 person under twenty-one years of age shall be allowed to witness the execution.]

[546.750. After the execution the chief administrative officer of the
2 correctional facility shall make a return upon the death warrant to the court by which
3 the judgment was rendered, showing the time, mode and manner in which it was
4 executed.]

[565.032. 1. In all cases of murder in the first degree for which the death
2 penalty is authorized, the judge in a jury-waived trial shall consider, or he shall
3 include in his instructions to the jury for it to consider:

4 (1) Whether a statutory aggravating circumstance or circumstances
5 enumerated in subsection 2 of this section is established by the evidence beyond a
6 reasonable doubt; and

7 (2) If a statutory aggravating circumstance or circumstances is proven beyond
8 a reasonable doubt, whether the evidence as a whole justifies a sentence of death or
9 a sentence of life imprisonment without eligibility for probation, parole, or release
10 except by act of the governor. In determining the issues enumerated in subdivisions
11 (1) and (2) of this subsection, the trier shall consider all evidence which it finds to be

12 in aggravation or mitigation of punishment, including evidence received during the
13 first stage of the trial and evidence supporting any of the statutory aggravating or
14 mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is
15 a jury, it shall not be instructed upon any specific evidence which may be in
16 aggravation or mitigation of punishment, but shall be instructed that each juror shall
17 consider any evidence which he considers to be aggravating or mitigating.

18 2. Statutory aggravating circumstances for a murder in the first degree
19 offense shall be limited to the following:

20 (1) The offense was committed by a person with a prior record of conviction
21 for murder in the first degree, or the offense was committed by a person who has one
22 or more serious assaultive criminal convictions;

23 (2) The murder in the first degree offense was committed while the offender
24 was engaged in the commission or attempted commission of another unlawful
25 homicide;

26 (3) The offender by his act of murder in the first degree knowingly created
27 a great risk of death to more than one person by means of a weapon or device which
28 would normally be hazardous to the lives of more than one person;

29 (4) The offender committed the offense of murder in the first degree for
30 himself or another, for the purpose of receiving money or any other thing of monetary
31 value from the victim of the murder or another;

32 (5) The murder in the first degree was committed against a judicial officer,
33 former judicial officer, prosecuting attorney or former prosecuting attorney, circuit
34 attorney or former circuit attorney, assistant prosecuting attorney or former assistant
35 prosecuting attorney, assistant circuit attorney or former assistant circuit attorney,
36 peace officer or former peace officer, elected official or former elected official during
37 or because of the exercise of his official duty;

38 (6) The offender caused or directed another to commit murder in the first
39 degree or committed murder in the first degree as an agent or employee of another
40 person;

41 (7) The murder in the first degree was outrageously or wantonly vile, horrible
42 or inhuman in that it involved torture, or depravity of mind;

43 (8) The murder in the first degree was committed against any peace officer,
44 or fireman while engaged in the performance of his official duty;

45 (9) The murder in the first degree was committed by a person in, or who has
46 escaped from, the lawful custody of a peace officer or place of lawful confinement;

47 (10) The murder in the first degree was committed for the purpose of
48 avoiding, interfering with, or preventing a lawful arrest or custody in a place of
49 lawful confinement, of himself or another;

50 (11) The murder in the first degree was committed while the defendant was
51 engaged in the perpetration or was aiding or encouraging another person to perpetrate
52 or attempt to perpetrate a felony of any degree of rape, sodomy, burglary, robbery,
53 kidnapping, or any felony offense in chapter 195, RSMo;

54 (12) The murdered individual was a witness or potential witness in any past

55 or pending investigation or past or pending prosecution, and was killed as a result of
56 his status as a witness or potential witness;

57 (13) The murdered individual was an employee of an institution or facility
58 of the department of corrections of this state or local correction agency and was killed
59 in the course of performing his official duties, or the murdered individual was an
60 inmate of such institution or facility;

61 (14) The murdered individual was killed as a result of the hijacking of an
62 airplane, train, ship, bus or other public conveyance;

63 (15) The murder was committed for the purpose of concealing or attempting
64 to conceal any felony offense defined in chapter 195, RSMo;

65 (16) The murder was committed for the purpose of causing or attempting to
66 cause a person to refrain from initiating or aiding in the prosecution of a felony
67 offense defined in chapter 195, RSMo;

68 (17) The murder was committed during the commission of a crime which is
69 part of a pattern of criminal street gang activity as defined in section 578.421.

70 3. Statutory mitigating circumstances shall include the following:

71 (1) The defendant has no significant history of prior criminal activity;

72 (2) The murder in the first degree was committed while the defendant was
73 under the influence of extreme mental or emotional disturbance;

74 (3) The victim was a participant in the defendant's conduct or consented to
75 the act;

76 (4) The defendant was an accomplice in the murder in the first degree
77 committed by another person and his participation was relatively minor;

78 (5) The defendant acted under extreme duress or under the substantial
79 domination of another person;

80 (6) The capacity of the defendant to appreciate the criminality of his conduct
81 or to conform his conduct to the requirements of law was substantially impaired;

82 (7) The age of the defendant at the time of the crime.]